

EVIDENCE — Rule 404(b) — Absence of Mistake or Accident — Revised 3/2010

Evidence is admissible under Rule 404(b) (other crimes, wrongs, or acts) if it is used to demonstrate a lack of mistake or accident. In *State v. Ives*, 187 Ariz. 102, 927 P.2d 762 (1996), one of the exceptions that the State argued was that of "absence of mistake" in a child molestation case. The court held that because the defendant denied ever touching the girls improperly and did not say that he touched them by mistake, the State could not use the other acts to show absence of mistake. However, if the defendant had argued that he mistakenly touched the girls in an improper way, the acts might have been admissible. Thus, the prosecution cannot put in evidence of other acts to establish "absence of mistake or accident" unless the defendant is claiming that he did the acts by mistake or accident. If the defendant completely denies the acts, there is no claim of "mistake or accident" to refute.